IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

Crl.MC.No. 3010 of 2007()

AGAINST THE ORDER DATED / / IN CC 112/2007 IN ST.2063/2006 of JUDL.MAGISTRATE OF FIRST CLASS, NADAPURAM

.....

PETITIONER:

CHAMA PARAMBATH C.P.IBRAHIM HAJI,
S/O. KUNHABDULLA HAJI, AGED 49, THAYYUL VEEDU,
KUMMAM THODU AMSOM AND DESOM, VADAKARA TALUK.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:

---

1. ACHAN KANDI MUHAMMEDALI HAJI,
S/O. ABDULLA HAJI, AGED 61, RESIDING AT
ADUKKOTH, ACHAN KANDI VEEDU,
AYANCHERI AMSOM AND DESOM, THAROPOYIL P.O.

2. MALOCHAL MUHAMMED, S/O. KUNHABDULLA,
KAKKAT THAZHEKUNIYIL, AGED 40, KADAMERI AMSOM,
VILAYIDAM DESOM, NEAR VILAYIDAM OLD JUM-U-A-MASJID

3. KARIYATT KUNHAMMED HAJI, S/O.
ABDULLAKKUTTY, AYANCHERI AMSOM AND DESOM,
THAROPOYIL P.O.

4. C.K.MOHANAN, S/O. KUMARAN,
CHATHIRIYIL HOUSE, AGED 47, NARIPPANA AMSOM AND
DESOM, INDIRA NAGAR P.O.

5. STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. JIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3010 OF 2007

Dated this the 28th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instruments Act. He is the complainant in a private complaint wherein he has allegedly committed offences punishable, inter alia, under Secs.420 and 471 of the IPC. The complainant in the prosecution under Sec.138 of the Negotiable Instruments Act is the 4th accused in the prosecution under Sec.420 of the IPC. Both cases are pending before the same court – the learned Judicial Magistrate of the First Class, Nadapuram.

2. According to the petitioner, the two cases are in the nature of a case and counter case. Assertions of the complainant in one case will be the defence of the accused in the other case. In this view of the matter, they are akin to a

case and counter case. The petitioner therefore wants both cases to be reckoned as a case and counter case and disposed of simultaneously by the same Magistrate.

3. It appears to me to be elementary that the two cases must be disposed of by the same judicial mind in accordance with the principles of trial and simultaneous disposal of a case and counter case. Why has the petitioner come to this Court now? Did he request the learned Magistrate to take up the two cases together and dispose them of simultaneously one after the other in succession? Admittedly, no such request/application has been made.

4. I find absolutely no reason to assume that the learned Magistrate, if he is apprised of the pendency of both the cases before him, will not take up both the cases together reckoning them as cases in the nature of a case and counter case. It is for the petitioner to file an appropriate application before the learned Magistrate, if an oral submission were found to be inadequate.

5. In these circumstances, I do not think it necessary to issue any directions in this Crl.M.C. But I do observe that the petitioner can bring the facts to the notice of the learned Magistrate by making appropriate submissions and by filing a

proper petition making the said request. Needless to say, the learned Magistrate must consider such request on merits and take appropriate decision.

6. With the above observations, this Crl.M.C. is dismissed.

7. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge